

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

VIVIAN BURNS,

Plaintiff,

v.

RICARDO MARTINEZ et al.,

Defendant.

CASE NO. 2:24-cv-01826-LK

ORDER ADOPTING REPORT AND  
RECOMMENDATION

This matter comes before the Court on United States Magistrate Judge Brian A. Tsuchida's Report and Recommendation ("R&R") recommending that the Court deny Ms. Burns' *in forma pauperis* application. Dkt. No. 6. For the reasons explained below, the Court adopts the R&R and dismisses this action without prejudice.

On November 5, 2024, pro se Plaintiff Vivian Burns filed an application for leave to proceed *in forma pauperis* ("IFP") and attached a proposed complaint. Dkt. Nos. 1, 1-2. On November 8, 2024, the Clerk of Court sent Ms. Burns a Notice of Filing Deficiency concerning the fact that not all sections of the IFP application had been "completed, signed, and dated." Dkt.

1 No. 4 at 1. This Notice was mailed to Ms. Burns at the address then listed on file for her in this  
2 matter: 10605 SE 240th Street, No. 344, Kent, WA 98301. *Id.*

3 On December 16, 2024, Judge Tsuchida issued an R&R recommending that the Court deny  
4 Ms. Burns' IFP application and direct Ms. Burns to either submit a completed IFP application or  
5 pay the usual filing fee within 14 days of the adoption of the R&R. Dkt. No. 6 at 2. The R&R also  
6 noted that "[p]ursuant to LCR 41(b)(2), a matter is subject to dismissal without prejudice for failure  
7 to prosecute if a party proceeding pro se has failed to notify the Court within sixty days after mail  
8 is returned by the Postal Service." *Id.* at 1. A copy of the R&R was sent to Ms. Burns at her listed  
9 SE 240th Street address. However, both the Notice of Filing Deficiency and the R&R were  
10 returned as undeliverable, with stamps indicating that Ms. Burns was no longer located at that  
11 address. Dkt. Nos. 5, 7.

12 On January 15, 2025, the Court deferred ruling on the R&R and directed the Clerk of Court  
13 to resend copies of the Notice of Filing Deficiency and the R&R to the address listed on Ms. Burns'  
14 filings: 1229 W. Smith Street, Kent, WA 98302. Dkt. No. 8 at 2 (citing Dkt. No. 1-2 at 1-15; Dkt.  
15 No. 1-3 at 1; Dkt. No. 1-4 at 1). In that order, the Court also warned that Ms. Burns' failure to  
16 correct her address and any filing deficiencies within 14 days would result in dismissal. *Id.* Ms.  
17 Burns failed to take any corrective action by the Court's January 29, 2025 deadline.

18 Based on an independent review of the record, the Court now concurs with Judge Tsuchida  
19 that Ms. Burns' IFP application should be denied and this action is subject to dismissal without  
20 prejudice for failure to prosecute pursuant to Local Civil Rule 41(b)(2), and further finds that  
21 dismissal is appropriate for failing to comply with the Court's January 15 order. *See Keno v.*  
22 *Arizona*, No. CV-16-00721-TUC-JGZ, 2018 WL 2387944, at \*1 (D. Ariz. May 25, 2018)  
23 (adopting report and recommendation after an independent review of the record despite  
24 petitioner's failure to provide an updated address).

1 Accordingly, the Court ORDERS the following:

2 (1) The Court ADOPTS the R&R. Dkt. No. 6.

3 (2) This case is DISMISSED without prejudice.

4 (3) The Clerk is directed to send copies of this Order to Ms. Burns at both of her last known  
5 addresses (at SE 240th Street and W. Smith Street) and to Judge Tsuchida.

6 (4) The Clerk is directed to CLOSE this case.

7 Dated this 6th day of February, 2025.

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Lauren King  
10 United States District Judge  
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